

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
North Dakota State Board of Medical)
Examiners - Investigative Panel B,)
(formerly Commission on Medical)
Competency))
Complainant,)
vs.)
Craig R. Sprenger, M.D.,)
Respondent.)

**RECOMMENDED FINDINGS
OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

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On July 29, 1999, a Complaint was filed with the North Dakota State Board of Medical Examiners ("Board") by Mr. John M. Olson, special assistant attorney general, attorney for the Commission on Medical Competency, requesting that the Board revoke the license to practice medicine in North Dakota ("License") of Craig R. Sprenger, M.D., the Respondent. The Complaint alleges as grounds for administrative action by the Board violations of N.D.C.C. § 43-17-31(4), specifically, that the "Respondent has habitually used marijuana."

On November 8, 1999, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On November 9, 1999, ALJ Allen C. Hoberg was designated.

On November 19, 1999, the ALJ issued a Notice of Hearing. The notice scheduled a December 28, 1999, hearing. On December 13, 1999, counsel for the Respondent, Mr. Bruce D. Quick, Fargo, asked for a continuance. Mr. Olson did not object. On

December 16, 1999, the ALJ issued a Continuance and Notice of Rescheduled Hearing. The notice scheduled a February 2, 2000, hearing. At the request of counsel the matter was again continued. On January 28, 2000, the ALJ issued another Continuance and Notice of Rescheduled Hearing. The notice scheduled a March 9, 2000, hearing. On February 28, 2000, Mr. Olson wrote to the ALJ asking for a cancellation of the hearing. On March 1, 2000, the ALJ issued a Notice of Indefinite Continuance. On April 11, 2000, Mr. Olson wrote to the ALJ again noting that this pending matter would be “resolved soon after the criminal proceedings have been concluded.” On May 15, 2000, the ALJ wrote to Mr. Olson asking whether the matter had been resolved or whether he should schedule a prehearing conference to reschedule this matter for a formal hearing. On May 18, Mr. Olson wrote to the ALJ saying, “[i]t is unlikely that the parties can resolve the ... matter” and asking the ALJ to set a prehearing conference to schedule a hearing and work out logistical problems.

On May 23, 2000, the ALJ issued a Notice of Prehearing Conference scheduling a May 25, 2000, prehearing conference. At the request of Mr. Quick, on May 26, 2000, the ALJ issued a Notice of Rescheduled Prehearing Conference scheduling a May 31, 2000, prehearing conference. The prehearing conference was held as rescheduled. Counsel agreed at the prehearing conference to a hearing date and location.

On June 2, 2000, the ALJ issued a Second Notice of Rescheduled Hearing scheduling a hearing for June 22 and 23, 2000, in Fargo. The hearing was not held as scheduled.

On June 15, 2000, Mr. Olson filed a Motion to Amend Complaint, brief, Amended Complaint, and Affidavit of Service. The Respondent did not file an objection to the Amended Complaint. However, due to weather conditions (Fargo flood) and some confusion about the effect of the Amended Complaint, the June 22-23 hearing was cancelled.

On June 28, 2000, the ALJ issued a Third Notice of Rescheduled Hearing. The notice scheduled an August 14, 2000, hearing at the district court chambers in Fargo. The hearing was held as rescheduled. Dr. Sprenger was present. Mr. Quick represented him at the hearing. Mr. Olson represented the Board's Investigative Panel B, formerly the Commission on Medical Competency.

Prior to the hearing, on August 4, 2000, Mr. Olson had filed a Seconded (*sic*) Amended Complaint. This amended complaint alleges violations of N.D.C.C. § 43-17-31(4) and (6), specifically that the Respondent "has habitually used marijuana," and that the Respondent "committed unprofessional conduct that was likely to harm the public" by using a controlled substance (marijuana), manufacturing amounts of the drug, and being convicted of manufacturing a controlled substance (a class B felony), possession of a controlled substance (a class C Felony), and possession of drug paraphernalia (a class A misdemeanor). On August 8, 2000, the Respondent signed an Admission to Second Amended Complaint, admitting all of the allegations of that amended complaint. In the admission the Respondent stated "that there is no agreement for disposition or discipline and that this matter shall proceed to a hearing before the ...[ALJ] and/or the...Board... for an appropriate disposition." Therefore, the August 14, 2000, hearing was held not to prove a complaint against Sprenger but for the purpose of taking evidence about the proper disposition of this matter, because that amended complaint is admitted.

At the hearing, as to disposition, Mr. Olson called three witness, Dr. Sprenger, Jeff White, chief agent, North Dakota Bureau of Criminal Investigation, Office of Attorney General, and Dr. Dennis E. Wolf, a Dickinson family practice physician, a licensed North Dakota physician well acquainted with addiction medicine. Mr. Quick called ten witnesses: Susan

Stenehjem-Brown, a licensed addiction counselor and licensed professional clinical counselor, Dr. Sprenger's primary counselor, Fargo; three of Dr. Sprenger's co-workers, Dr. Barry L. March, M.D., a Fargo physician specializing in internal medicine and critical care, Dr. Frank J. Sepe, M.D., a Fargo physician specializing in internal medicine, and Dr. Janelle Sanda, M.D., a Fargo physician specializing in internal medicine (chair of the department); Dr. Robert R. Ivers, M.D., a Fargo physician specializing in neurology; Dr. George M. Johnson, M.D., a Fargo physician specializing in pediatric care; Dr. Robert C. Montgomery, M.D., a Fargo physician specializing in pediatric care; Deborah J. Nelson, MS, MBA, RN-C, FNP, a Fargo nurse practitioner; Mr. Timothy Q. Davies, a Fargo attorney; and Dr. Sprenger. (Dr. Sprenger was called as a witness again for his case in chief and for rebuttal.)

Twenty-one exhibits were marked; twenty were offered and admitted. Mr. Olson offered exhibits 1-5 and 14. Mr. Quick offered exhibits 6-12 and 16-21. Exhibit 13 (an article) was marked but not offered. Two of the exhibits are boxes containing items. Exhibit 6 is a box of cannabis. Exhibit 2 is a box containing plastic cups and cannabis seeds. Exhibit 6 and some of the items in exhibit 2 were also evidence in the criminal matter regarding Dr. Sprenger.

The parties filed simultaneous post-hearing briefs. The ALJ received both the Panel B Recommendation for Disposition and Sprenger's Dispositional Brief on August 28, 2000.

Based on the Seconded (*sic*) Amended Complaint and the Admission to Second Amended Complaint, as well as the evidence regarding disposition presented at the hearing and the briefs of counsel, the administrative law judge issues the following recommended decision.

It is not necessary for the ALJ to issue recommended findings of fact and conclusions of law in this matter. Again, Investigative Panel B has issued an amended complaint in this matter. It alleges that Dr. Sprenger has habitually used alcohol or drugs as proscribed by

N.D.C.C. § 43-17-31(4), in that he has habitually used marijuana. It further alleges that Dr. Sprenger has committed unprofessional conduct that was likely to harm the public in violation of N.D.C.C. § 43-17-31(6), in that he habitually used a controlled substance, namely marijuana, and manufactured amounts of marijuana, further evidenced by that fact that he was convicted (found guilty by a jury) of manufacturing a controlled substance (a class B felony), possession of a controlled substance (a class C felony), and possession of drug paraphernalia (a class A misdemeanor). Dr. Sprenger admits that all of these allegations of that amended complaint are true and are grounds for disciplinary action under N.D.C.C. § 43-17-30.1. Therefore, in light of his admission, findings of fact establishing a basis for conclusions of law and resulting administrative action are unnecessary.

EVALUATION OF EVIDENCE IN REGARD TO DISPOSITION

Dr. Sprenger is a Fargo physician, a North Dakota native, practicing at the MeritCare Hospital and Clinic. He specializes in internal medicine. He graduated from the University of North Dakota School of Medicine in May 1992. He did his residency at the University of Minnesota Hospital and Clinic in Minneapolis. Dr. Sprenger came to practice in Fargo at MeritCare in 1995. See exhibit 20, Curriculum Vitae, for additional information about Dr. Sprenger. Dr. Sprenger has very good credentials and is apparently very well respected by the medical community and his patients. At least those physicians testifying for Dr. Sprenger had very good things to say about him. *See* testimony of Drs. March, Sanda, Sepe, Montgomery, Ivers, and Johnson. *See also*, Dispositional Brief, at 7-10. Also, three people who were not physicians had very good things to say about Dr. Sprenger. *See* testimony of Ms. Stenehjem-Brown, Mr. Davies, and Ms. Nelson. *See also*, Dispositional Brief, at 7-10.

Subsequent to Dr. Sprenger's arrest, he entered an outpatient addiction treatment program after a full evaluation. At the present time he is continuing with therapy as well as a 12-step program for addiction. Dr. Sprenger was reinstated in his practice at MeritCare subsequent to his intensive outpatient treatment program, and he has apparently been performing his professional duties in a diligent and competent manner since then.

However, the most pertinent facts for the disposition phase of this matter are not Dr. Sprenger's medical education and his medical and other credentials, or his reputation in the medical community and amongst his patients, or his reputation in the community in general, though these facts are somewhat pertinent. This is not a simple case of addiction where such facts may be considered to balance the addiction. The facts that are the most pertinent in this matter are those facts related to the crime he has committed and his habitual use of marijuana. Dr. Sprenger was convicted of a class B felony (manufacturing a controlled substance), a class C felony (possession of a controlled substance), and a class A misdemeanor (possession of drug paraphernalia). The Board does not have the responsibility to sanction Dr. Sprenger for his criminal convictions. That matter is left entirely to the criminal justice system. However, the Board does have the responsibility to issue sanctions or penalties in accordance with the licensing requirements. In that regard, the criminal conduct that resulted in the convictions must be considered. Dr. Sprenger's criminal convictions resulted from an addiction to marijuana and from habitual use of marijuana over a twenty-two year period of time.

Dr. Sprenger is 38 years old. He has been a habitual user of marijuana for 22 years and at some point, probably shortly after beginning to use marijuana, became addicted to its usage. Dr. Sprenger began using marijuana when he was 16 years old. With 22 years of addiction affecting him and, undoubtedly shaping him to some extent, he may have been still using

marijuana today, had he not been caught and arrested. He did not stop using marijuana of his own volition. He stopped because he was caught, arrested, and faced with a multitude of problems resulting from his use of marijuana. Even now, he is still considered to be addicted to marijuana, though he has not used marijuana at all since his arrest, on June 11, 1999.

Actually, Dr. Sprenger appears to have been very lucky. The evidence does not show that his addiction to marijuana interfered with his practice as a physician. Dr. Sprenger never came to work under the influence of marijuana, *i.e.*, he was never impaired when he came to work. At least he says he was not and no one else said that he ever was. Several physicians testified that they never saw him under the influence; they never saw him apparently impaired. Yet, even Dr. Sprenger admitted that there is always a chance of work impairment when one is addicted to marijuana. Dr. Wolf testified that chronic use of marijuana could cause impairment, even when usage is not immediately prior to work. There was always that risk for Dr. Sprenger's patients. Dr. Wolf also testified that chronic marijuana use also could cause flashbacks of marijuana symptoms even when the user is not presently intoxicated. He also testified that marijuana could stay in the body for several days after a person last uses it.

Certainly, Dr. Sprenger's use of marijuana could be classified as chronic, and heavy at times. He smoked a joint about twice a week from the time he was 16 until he was eighteen. He smoked heavily almost every day for two years after high school, when he was a welder, before he went to college. During his five years of undergraduate school at UND, his usage remained heavy, about the same as that two-year period before school. During two years of graduate school in pharmacology, Dr. Sprenger continued to consistently use marijuana (nightly). During four years of medical school, he continued to smoke marijuana nightly. Dr. Sprenger even grew marijuana in college. Since graduation from medical school, Dr. Sprenger has continued to

consistently use marijuana, on his free time and when he was not on call. Again, however, Dr. Sprenger never used marijuana when on call or when working as a physician. He never smoked marijuana less than 12 hours before going on call or going in to work, according to his testimony. He said that he always smoked after working, never right before working.

Therefore, the evidence shows, that Dr. Sprenger used marijuana roughly nightly all during the time he was practicing as a physician in Fargo, from 1995 until 1999, though he says that he smoked marijuana in lesser quantities than he did before he came to Fargo.

Dr. Sprenger also grew marijuana while he was licensed and practicing as a physician in Fargo. He started growing marijuana in Fargo in 1996. He grew rather large quantities at his Fargo home, though there is no evidence that the marijuana he harvested from his crop was for other than his own personal use. Law enforcement discovered 82 plants growing in the Sprenger home just before Sprenger's arrest. Jeff White testified that growing 20 plants for personal use is adequate. Mr. White characterized the Sprenger criminal case as a "large possession case." Dr. Sprenger's grow operation could be characterized as a fairly sophisticated grow operation. Contrary to what Dr. Sprenger says about him smoking less marijuana since coming to Fargo, an inference could be drawn from the evidence that Dr. Sprenger smoked a large amount of marijuana because there is no evidence of him selling or otherwise distributing the drug to others.

Consequently, in light of the facts about Dr. Sprenger's prior usage and his usage after moving to Fargo, it seems amazing that Dr. Sprenger's marijuana usage did not somehow affect his practice of medicine. Perhaps it did in ways that are not easily demonstrated or explained. Again, however, there is no evidence of any affect yet, though Dr. Wolf believes that a more complete evaluation of Dr. Senger should be conducted.

Of course, during the hearing and in his brief, Dr. Sprenger emphasizes his positive attributes and credentials, as well as all of the good things others have to say about him. He focuses on the good. He does not want to focus on the bad. He would like to de-emphasize the extreme negative of his admissions involving the amended complaint. Undoubtedly, Dr. Sprenger is an asset to the MeritCare Hospital and Clinic, to his patients, and to the city of Fargo, especially since his conviction and the court-ordered community service hour's requirement, working with Cass County Public Health and the Community Clinic.

EVALUATION OF THE LAW AND PREVIOUS BOARD DECISIONS

There is an inherent or implicit correlation between committing a crime or doing something else that would be grounds for disciplinary action and the corresponding professional discipline through administrative procedures that relates to consequences. It is stated generally as the duty of the licensing entity through disciplinary action to promote the licensee's rehabilitation, to protect the public from the licensee and to continue to be assured that the public is being protected, and to deter other licensees from engaging in similar conduct. *See Galang v. State Medical Examining Bd.*, 484 N.W. 2d 375, 377 (Wis. 1992).

In an administrative context, the imposition of a penalty is different than a penalty imposed as punishment for violation of the criminal laws. It is more of a reckoning with a profession that has statutory and regulatory obligations to the profession and the public. It is also a guard against future action by the professional until a later time when it can be determined that such a guard is not longer necessary.

In the words of the law, the licensing entity, *i.e.*, the Board, on behalf of the profession, can impose sanctions to protect the public within the statutory limitations and barring an abuse of

discretion. The Board, in its complete discretion may take disciplinary action in one of several forms, from imposition of a fine to suspension or revocation of license, as the result of a finding of one or more violations of N.D.C.C. § 43-17-31. *See* N.D.C.C. § 43-17-30.1.

Dr. Sprenger has admitted to violations of N.D.C.C. § 43-17-31(4) and (6); therefore, the Board may impose administrative sanctions or penalties upon him as it sees fit. Dr. Sprenger has fallen far short of the expectations and standards imposed upon him by his professions. The public needs to be protected from chemically impaired or addicted physicians. The profession needs to be protected from chemically impaired or addicted physicians. The profession needs to deter physicians from being chemically impaired or addicted physicians.

In his brief, Dr. Sprenger refers to several Board dispositions in drug and/or alcohol related violation matters. The Board should read that section of his brief. Dispositional Brief, at 11-18. However, it is also relevant for the Board to be aware of other matters recently before the Board not involving drug and/or alcohol related violations. Some of these, though not involving criminal convictions, may be more relevant than some of the impairment cases cited by Dr. Sprenger in his brief. The Board must be cognizant of all the matters that come before it when it imposes penalties. The Board must weigh many factors in a relative manner. The following are a few of the more recent matters.

In the matter of Dr. Christoferson, the Board suspended his license for five years (three years stayed upon terms and conditions) for a continued pattern of inappropriate patient care; for dishonorable, unethical, or unprofessional conduct likely to harm the public; and for failure to maintain appropriate documentation in medical records.

In the matter of Dr. Larsen, the Board revoked his license for sexual relationships with a patient that was considered sexual abuse, misconduct or exploitation, and for providing false, fraudulent, or forged statements in the license application process.

In the matter of Dr. Chang, the Board revoked his license for impermissible sexual contact with two patients.

In the matter of Dr. Peterson, the Board issued a letter of concern regarding his license and ordered him to pay all costs of the investigation and prosecution for violations of N.D.C.C. § 43-17-31(6) and (11), performance of dishonorable, unethical, and unprofessional conduct likely deceive, defraud, or harm the public. Dr. Peterson was advertising for the practice of medicine in an untrue or deceptive manner.

Although it may be true that the Board has not, in most instances, completely deprived a doctor of his license following a finding of drug or alcohol abuse (Dispositional Brief, at 11) it should be emphasized that the Board has revoked the license of a physician that habitually used alcohol or drugs, had a history of chemical dependency, and had been suspended from the practice of medicine and surgery in another state (Weidman, Dispositional Brief, at 18). His license was restored after revocation, upon petition. Nevertheless, it was initially revoked. Also, the Board has suspended for five years, the license of a physician that consumed large amounts of a drug before a surgical procedure, though the physician was allowed to petition for a stay of the order of suspension, upon terms and conditions (Chilian, Dispositional Brief, at 14). *See also*, Dispositional Brief, at 15-17, discussing other matters when the Board has suspended the license of physician in drug related matters.

EVALUATION OF OTHER BOARD DECISIONS

Other matters coming before the Board may not be precedence in this matter. Certainly prior dispositions in administrative matters from other agencies, boards, and commissions are not precedence. However, other agencies, boards, and commissions also frequently take administrative action against licensees based on complaints of violation of law that are proven at hearing. The ALJ is aware of these matters. The Board should be aware of these matters.

The Board of Nursing is one board that considers the activities of professionals in situations similar to physicians. In the last few years the Board has revoked a registered nurse license for allegations proven of conviction of a crime in another state (impersonating a law enforcement officer), obtaining a license by fraud and deceit (failing to provide information about administrative action in other states), and stating false information on an employment application. It has suspended for one year the license of a registered nurse for conviction of simple assault in this state, once refusing a proper request by an employer to submit to a chemical screening, and working one time while under the influence of a chemical substance.

The Administrators Professional Practices Board (“APPB”) is the board regulating school administrators in North Dakota. The Education Standards and Practices Board (“ESPB”) is the board regulating teachers in North Dakota. Recently the APPB revoked the professional teachers license of a school principal for a theft conviction, the one time theft of school funds (a class C felony). In the last few years the ESPB has revoked the teaching certificate of a teacher for conviction of the crime of corruption of a minor (relating to a student); and revoked the teaching certificate of a teacher for conviction of the crimes of gross sexual imposition and corruption of a minor (relating to a student).

Among other things, the Commissioner of Insurance regulates the activities of resident and nonresident insurance agents in North Dakota. The Commissioner of insurance recently revoked a resident insurance agent's license for making false statements or representations on an application for insurance, forging another's name on an application for insurance, and for being convicted of the crimes of issuing an NSF check (class B misdemeanor) and issuing a check without an account (class A misdemeanor). The Commissioner of insurance recently denied the application for a resident insurance agent's license of a formerly licensed agent whose license was revoked in 1990 pursuant to a consent order for participating in a rebating scheme, unlawful sharing of commissions, selling insurance without holding the required company appointments, lying on life insurance applications, and forging another agent's name to applications for life insurance. The application was denied even though the former ND agent had never been convicted of a crime with regard to any of the insurance violations and even though the state of Minnesota had been licensing the former ND agent since 1998.

Agencies, boards, and commissions also frequently take severe administrative action against licensees when no criminal action is involved. The Board of Nursing revoked a registered nurse license for acting as a midwife in the birth of a baby without holding a license as an advance practice registered nurse; revoked a registered nurse license for physical and verbal resident abuse, refusing to admit a resident, and forcing medication on a resident; and suspended for one year the license of a registered nurse for giving a patient a breast examination that was not requested, removing a nursing manual from the workplace without permission, issuance of medication without a doctor's orders, and inaccurately and incompletely recording information in patient records. The ESPB suspended for one year the teaching certificate of a teacher for breach of contract with the employing school. The Board of audiology and speech-language

Pathology regulates all North Dakota audiologists and speech-language pathologists. These professionals provide care and services for hearing impaired and speech or language impaired persons. The Board recently revoked the license of an audiologist for providing inappropriate and improper patient care, including improper testing, and for unprofessional and unethical conduct with regard to two hearing impaired patients. The State Electrical Board regulates all electricians in North Dakota. It recently revoked a master electrician's license because the electrician was doing electrical work without issuing the required certificates on numerous occasions and was filling out one wiring certificate for two separate jobs on three occasions. It suspended for five years a master electrician's license because the electrician was doing electrical work for which a certificate had not been issued, was failing to correct within specified time limits electrical installations not in compliance with standards, was failing to provide proper supervision of apprentice electricians, and was failing to follow the requirements of the electrical code standards on numerous projects. The State Water Well Contractors Board recently suspended the contractor's license of a licensee for one year (six months stayed upon terms and conditions) for numerous occasions of failing to file a completion report as required by law after drilling wells.

Many of the above administrative actions involved the activities of a professional that were directly related to the professionals work in the regulated profession. Although Dr. Sprenger committed no crime directly related to the practice of medicine and committed no violations of statute directly related to the practice of medicine, habitual use of marijuana is a practice that could have a direct effect on the practice of medicine and could affect the care of patients of a North Dakota licensed physician. Although there is no showing that Dr. Sprenger did actual harm to any patient, a conclusion must be reached that the type of usage he engaged in

and his addiction is certainly alarming and threatening to the safe practice of medicine. It was a threat during the time of his continued usage. It is still a threat during his continued addiction. In both an absolute and relative manner, his admitted violations of N.D.C.C. ch. 43-17 can only be considered very serious and should result in serious consequences.

RECOMMENDED ORDER

Dr. Sprenger admitted the allegations of the Seconded (*sic*) Amended Complaint. He has violated the provisions of N.D.C.C. § 43-17-31(4) and (6). These are very serious violations of the provisions regulating all physicians in North Dakota. The administrative sanctions should be correspondingly severe. Investigative Panel B, through counsel, recommends the following:

1. That Dr. Sprenger's license be suspended for a period of five (5) years, with four (4) of those years stayed, on the condition that Dr. Sprenger complete all of the other requirements of the recommendation.
2. That Dr. Sprenger complete a full evaluation at the Hazelden Foundation located near Minneapolis, Minnesota, and that he complete any other evaluation or comply with any other recommendations that are made by the Hazelden Foundation facility.
3. That Dr. Sprenger continue in individual and family therapy as recommended by the Hazelden Foundation or his current treatment counselors.
4. That Dr. Sprenger participate in a 12-step group on at least a weekly basis.
5. That when Dr. Sprenger returns to the full-time practice of medicine he shall enroll in the Board of Medical Examiners Impaired Physicians Program and shall comply with the requirements imposed by the IPP contract.
6. That Dr. Sprenger pay all costs associated with the investigation and prosecution of this matter.

Although a longer-term suspension or even a revocation could easily be considered appropriate, Investigative Panel B's recommendation is consistent with the Board's obligation to impose a sanction based upon the seriousness of Dr. Sprenger's misconduct. It is also consistent with the Board's previous actions in regard to other offending physicians. It is also consistent with the type of actions taken by other boards, commissions and agencies in this state in regard to other types of professionals. Yet, it also reflects Dr. Sprenger's commitment to recovery from his addiction as well as the other favorable qualities he has exhibited that warrant returning him to the full-time practice of medicine.

It is HEREBY ORDERED that the Board ACCEPT the recommendations of Investigative Panel B.

Dated at Bismarck, North Dakota, this 5th day of September, 2000.

State of North Dakota
Board of Medical Examiners

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